KUMPULAN KERTAS NIAGA SDN. BHD. & ORS.

v.

THE NEW STRAITS TIMES PRESS (M) BHD.

HIGH COURT MALAYA, KUALA LUMPUR
SITI NORMA YAAKOB J
[CIVIL SUIT NO. P 714 OF 1982]
30 APRIL 1984

TORT: *Defamation - Libel - Publication by newspaper - Whether publication directed at right parties - Defence of justification and fair comment - Whether relevant.*

CIVIL PROCEDURE: *Application to strike out statement of defence - Order 18 r. 19, Rules of the High Court - Whether statement disclosed any defence.*

The suit arose from 2 libellous articles published by the defendants in their daily, The Malay Mail. The plaintiffs applied under O. 18 r. 19 of the Rules of the High Court to have the statement of defence struck off on the ground that it disclosed no defence at all. They claimed that the 1st plaintiff had been wrongly identified in the libellous articles with Syarikat Watak Bahru. The defendants did not deny the plaintiffs' claim but pleaded in their amended statement of defence that the 1st plaintiff was the beneficial owner of Syarikat Watak Bahru and that they were justified in publishing the articles and were fairly commenting on matters of public interest.

Held:

[1] The defendants had failed to identify the right parties in their articles. It had been established conclusively that the 1st plaintiff was not and had never been the beneficial owner of Syarikat Watak Bahru.

[2] The defence of justification and fair comment therefore had no relevancy to the facts of the case. Such defence would have been sustainable only if the defendants had succeeded in establishing that the 1st plaintiff was the beneficial owner of Syarikat Watak Bahru.

[Interlocutory judgment for the plaintiffs. Damages to be assessed.]

Legislation referred to:
Rules of the High Court 1980, O. 18 r. 19

For the plaintiffs - P.G. Segaran
For the defendants - W. Abraham

JUDGMENT

Siti Norma Yaakob J:

This suit arises from 2 libellous articles published by the defendants, The New Straits Times Press (Malaysia) Berhad, in their daily, The Malay Mail, dated 19 August 1982, and 21 August 1982.

Briefly, the offending articles which carried the headlines "PROBE ON MILLION RM SCANDAL" on the 19 August issue and "UNREGISTERED FIRM GOT RM900,000 PRINTING JOBS" on the 21 August issue alluded to the following facts:

> Between March to September 1980, the Government Printer, in the person of the then Director General, Dato Ibrahim Johari, without calling for tenders or quotations, awarded 10

printing contracts worth more than RM900,000 to an unregistered private company called Syarikat Watak Bahru. The shareholders of this company were the third and the fourth plaintiffs, who are the brothers-in-law of the Director General. As Syarikat Watak Bahru did not own any printing press and did not possess a printing licence, it passed the contracts to another private limited company, who carries on business as printers, called Percetakan Surat Sdn. Bhd., the second plaintiff. The shareholders of Percetakan Surat are also the shareholders of Syarikat Watak Bahru. Syarikat Watak Bahru was only registered in January 1981 and in June 1982, it was reconstructed as a 100% bumiputra company and given a new name, Kumpulan Kertas Niaga Sdn. Bhd., the first plaintiff with the fourth and fifth plaintiffs as directors of the company.

These facts as disclosed in the 2 articles were reported as a result of investigations carried out by The Malay Mail into allegations that a cartel of wholly bumiputra printing firms were monopolising government printing jobs, which consist mainly in the printing of forms for the various government departments. By these articles, the plaintiffs allege that they have been seriously injured in their character, credit and reputation as they have been held out to be dishonest and corrupt in the conduct of their office, trade and business.

The defendants filed their statement of defence on 18 February 1982 and this was followed by an application by the plaintiffs under O. 18 r. 19 of the Rules of the High Court to have the statement of defence struck off on the ground that it discloses no defence at all. However, before this application was heard, the defendants also filed an application to amend their original statement of defence and with the consent of both parties, I heard both applications in chambers the same day, wherein I dismissed the plaintiffs' application to have the statement of defence struck off and allowed the defendants' application to amend their statement of defence. Not satisfied with the order I made on their application, the plaintiffs applied for further arguments into open Court and after a number of adjournments, the application was finally heard and disposed off on 16 February 1984. For the purpose of their further arguments, the plaintiffs had no objection to the defendants relying on their amended statements of defence, which raised 3 issues,

(1) that the first plaintiff is the beneficial owner of Syarikat Watak Bahru.

(2) that they were justified in publishing the articles, and

(3) that it is fair comment on matters of public interest.

The gist of the plaintiffs' case is that they have been wrongfully identified to Syarikat Watak Bahru, the unregistered firm, to whom the 10 printing contracts had been awarded. To support their application, they exhibited a number of documents to establish the formation of the first plaintiff and Syarikat Watak Bahru. Firstly there is Exhibit MM 11, the first plaintiff's Certificate of Incorporation that establishes that it was registered on 7 January 1981 under the Companies Act 1965 under the name of Syarikat Watak Baru Sdn. Bhd. with the third and fourth plaintiffs as directors (see Exhibit MM 13). The fifth plaintiff became a director subsequently upon resignation of the third plaintiff on 9 April 1982 (see Exhibit MM 14). Then on 8 August 1982, Syarikat Watak Baru Sdn. Bhd. changed its name to Kumpulan Kertas Niaga Sdn. Bhd. (see Exhibit MM 12), a company limited by shares and it has all along been carrying on business as general traders and commercial agents.

From the various documentary exhibits, it is clear that the first plaintiff became an entity on 7 January 1981 when it was then known as Syarikat Watak Baru Sdn. Bhd. as it only assumed

its present name on 8 August, 1982. As general traders and commercial agents, it carries on business at No. 4.32 Pertama Office Tower, Pertama Complex, Jalan Tuanku Abdul Rahman, Kuala Lumpur.

Syarikat Watak Bahru, on the other hand, was registered under the Registration of Business Ordinance 1956 on 1 January 1980 as a partnership firm carrying on business at 20C, Jalan Jerjaka 9, Taman Maluri, Kuala Lumpur, as stationery supplier, printing agent, importer and exporter of papers and stationery. The partners of this firm are Azizah Hj. Osman and Yong Liew Wah (see Exhibit MM 3) and they were the signatories to the 10 printing contracts exhibited as MM 4 - 10 entered into by their firm, Syarikat Watak Bahru with the Government of Malaysia between the months of March to September, 1980. Thus at the material time when the 10 contracts were executed the only legal entity that was in existence which answers to the name of Syarikat Watak Bahru is the partnership firm belonging to Azizah and Yong as the first plaintiff only became an entity on 7 January 1981. By singling all the plaintiffs to the partnership firm of which they have no connection whatsoever, the articles have been mischievously printed and circulated and to cause members of the public reading them to conclude that the plaintiffs were the persons to whom the 10 printing contracts had been improperly and illegally awarded and that they had accepted them dishonestly and corruptly. Looking at the similarities of the names of the partnership firm and the first plaintiff, I can well understand the mix-up but as a responsible newspaper with a very wide circulation in this country, the defendants should have taken more care to ensure that their reporting of matters which they consider to be of public interest should be accurate and that no innocent parties are thereby injured by such publication. In this case, in their over zealous effort to publicise the evils of society, the defendants had thrown caution to the winds and they have shown themselves to be anything but thorough in their investigations when they relied on only one source of information to establish the identity of the business concern that was actually awarded the 10 printing contracts. If they had only made checks with both the Registrar of Companies and the Registrar of Businesses, they would come to realize there were two entities that bear almost similar names, although in the case of the first plaintiff, it does not have the letter "H" in the spelling of the word 'Baru'. As general traders and commercial agents, the first plaintiff had averred that printing is not its line of business or that it has never bid for printing contracts with the Government Printer. The plaintiffs have also denied that any of them was in any way related to the Director General who has since been charged in Court with corruption, or that the shareholders of the second plaintiff was the same as the shareholder of Syarikat Watak Bahru.

The defendants have not denied that they had wrongfully identified the plaintiffs in their affidavit or to the other averments raised by the plaintiffs but they plead in their amended statement of defence that the first plaintiff is the beneficial owner of Syarikat Watak Bahru, the partnership firm and that they were justified in publishing the articles and they were fairly commenting on matters of public interest. As I have already stated above, it has already been established conclusively that the first plaintiff is not and has never been the beneficial owner of Syarikat Watak Bahru. As for their defence of justification and fair comment, I could not agree with them more on this that such defences are sustainable if they had succeeded in establishing that the first plaintiff is the beneficial owner of Syarikat Watak Bahru. Since they had failed to do so, I consider that the defences raised are attempts to cloud the real issues in this case and to unnecessarily delay and prolong the proceedings of this suit. The defendants may argue that even if they fail to establish that the first plaintiff originated from Syarikat Watak Bahru, they can for the purpose of this application still succeed on their

defence of justification and fair comment in which case they should be allowed to defend this suit limited to the defence of justification and fair comment. That may well be so if they had identified the right parties in their articles in the first place and had in no way connected the present plaintiffs to their libellous articles. As far as I can see, the defence of justification and fair comment have no relevancy to the facts of this case as innocent parties have suffered by the writings of the defendants. On that finding, I had accordingly varied the order I made earlier in Chambers by allowing the plaintiffs' application to have the amended statement of defence struck off with costs and entered interlocutory judgment against the defendants for damages to be assessed.

Also found at [1984] 2 CLJ 285